



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a Resolution Approving an Agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbor Athletic Club, for Use of Pools at Twin Arbor Athletic Club Facilities for the Period June 2, 2003 to July 27, 2003

MEETING DATE: April 16, 2003

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council adopt a resolution approving an agreement for use of Twin Arbor Athletic Club pool facilities by the Summer Swim League program.

BACKGROUND INFORMATION: The Parks and Recreation Department currently provides a summer swim league program to over 600 children, up from 500 a few years ago. This program continues to grow, however, there have been no additional facilities available to expand the program.

Staff has been in discussions with Twin Arbor Athletic Club for several years to gain access to their pools in order to expand the program. For a third year, staff was successful in gaining access, thereby allowing for last year's team of 100+ swimmers to participate in the Summer Swim League. Staff recommends approving the agreement, which will allow the swimming pools at Twin Arbor to be used for meets and a team comprised of Twin Arbor members to participate in the league. Last year this same agreement was utilized for the program and worked well.

FUNDING: None

Roger Baltz  
Parks and Recreation Director

RB:jo

cc: City Attorney

APPROVED: \_\_\_\_\_

H. Dixon Flynn -- City Manager

04/02/03

Memorandum of Understanding  
(Summer Swim League)

THIS Memorandum of Understanding ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by Spare Time Incorporated d.b.a. Twin Arbor Athletic Club, ("TAAC") and THE CITY OF LODI, acting by and through its Parks and Recreation Department ("City").

Background

- A. City operates an eight-week summer swim league at the City owned Enze Pool, Lodi High School Pool and Tokay High School Pool. Currently, the City has six teams, each comprised of over 100 participants, TAAC also operates swimming programs at its privately owned pool facilities at 2040 W. Cochran Rd, Lodi and 1900 S Hutchins Rd, Lodi.
- B. TAAC desires to organize a team to participate in the summer swim league again. City is willing to permit TAAC to do so on a trial basis. However, in order to accommodate the sixth team, City requires the use of one or both of TAAC's pool facilities.
- C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. TAAC and City agree that TAAC will establish a sixth team named the "Dolphins" comprised of the members of its club to participate in the City's summer swim league.
2. Administration. Generally, the Dolphins team and its members will be treated identically to the City teams with the exceptions that the Dolphins coach may be paid an additional stipend by TAAC, and the Dolphins will practice at TAAC's facilities. Dolphins team members will register with and pay the City's Parks and Recreation Program. City will pay the Dolphins coach the same stipend paid to the City coaches. City shall have the right to oversee and supervise the Dolphin's coach and program, including all appropriate background checks of Dolphin's staff (whether paid or volunteer) and monitoring practices and swim meets to ensure compliance with all applicable laws, regulations, and City standards. TAAC shall cooperate with City's efforts to perform background checks and monitoring.
3. Fees/Recruiting Prohibited. No fees, other than TAAC's standard membership fee, shall be charged to any Dolphin team member. However, TAAC like other teams may accept donations and have fundraisers to solicit sponsorships. TAAC shall not engage in any efforts to recruit members during swim meets. TAAC shall not recruit members of City teams and TAAC members who wish to retain their affiliation with a City team must not be pressured

to join the TAAC team. However, TAAC will be permitted to inform its members that it is establishing a team to compete in the City's summer swim league and that TAAC members may join TAAC's team by signing up through the City's Parks and Recreation Department.

4. Use of Facilities. During the term of this Agreement, TAAC agrees to allow the use of its facilities, including but not limited to the showers, dressing areas, bathrooms, and spectator areas for Dolphins practice during the hours of 4:00 p.m. 8:00 p.m., Monday through Friday and for swim meets between any teams in the summer swim league from 8:00 a.m. to 12:00 p.m. on Sunday. No fees shall be charged to (1) the City for use TAAC's facilities; or (2) any child or spectator for any purpose, including but not limited to entry fees, or shower fees, during the swim meets. TAAC shall have the right to designate which of its pool facilities will be used for practices on whatever notice it deems appropriate and shall also have the right to designate which of its Lodi pool facilities will be used for swim meets on at least 30 days written notice to City. The meets held at TAAC pools will involve the Dolphins and a City team. At no time will two City teams use TAAC pool for swim meets.

5. Term. The term of this Agreement shall be from June 2<sup>nd</sup>, 2003 to July 27<sup>th</sup>, 2003 unless otherwise terminated as provided herein.

6. Maintenance. TAAC shall, at its own expense, maintain its premises and any buildings and or equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to City. City shall be entitled to inspect TAAC's pool facilities upon demand to ensure compliance with this paragraph.

7. Utilities. TAAC shall provide utility service to the premises at its sole cost and expense.

8. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Optional Termination. Either party may terminate this Agreement in writing upon at least 48 hours prior written notice. In the event of an early termination, the City, in its sole discretion, will determine which one of the following options to give to the entire Dolphins team:

- a. Join another of the five teams in the Summer Swim League;
- b. Continue on the Dolphins team for the remainder of the season with a coach to be supplied by the City without the use of the TAAC facilities; or
- c. Terminate their participation in the league and receive a pro-rated refund of the fees paid to the Parks and Recreation Department.

10. Indemnity and Insurance.

a. Indemnification by City: Except to the extent caused by the negligence or intentional misconduct of TAAC or of any agent, servant or employee of TAAC, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless TAAC and all associated, affiliated, allied and subsidiary entities of TAAC, now existing or hereinafter created, and their

respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the summer swim league or City's failure to comply with any applicable federal, state or local statute, ordinance or regulation.

b. Indemnification by TAAC: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, TAAC ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of TAAC, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

e. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to

any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnites' attorney, and the actual reasonable expenses of Indemnites' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnites in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnites by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.

iii. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.

iv. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.

v. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for workers compensation policies, shall name City and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. Evidence of Insurance: TAAC shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise TAAC of any claim or litigation that may result in liability to TAAC. TAAC shall immediately advise City of any claim or litigation that may result in liability to City.

i. Cancellation of Policies of Insurance: TAAC's insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

j. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

13. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Return Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to:	City of Lodi Parks & Rec. Dept P. O. Box 3006 221 W. Pine Street Lodi, CA 94240 Fax # (209) 333-0162 Attn: Roger Baltz
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If to TAAC, to:	Twin Arbors Athletic Club
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15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

16. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

17. Miscellaneous.

a. TAAC and City represent that each, respectively, has full right, power, and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in introduction above.

CITY OF LODI, a municipal corporation

TWIN ARBORS ATHLETIC CLUB


\_\_\_\_\_  
H. DIXON FLYNN  
City Manager

\_\_\_\_\_  
  
DENNIS KAUFMAN

ATTEST:

\_\_\_\_\_  
SUSAN J. BLACKSTON  
City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
  
RANDALL A. HAYS  
City Attorney

RESOLUTION NO. 2003-62

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
AGREEMENT BETWEEN THE CITY OF LODI AND SPARE TIME,  
INC., dba TWIN ARBOR ATHLETIC CLUB, FOR USE OF POOLS  
AT TWIN ARBOR ATHLETIC CLUB FACILITIES

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WHEREAS, the Parks and Recreation Department currently provides a summer swim league program to over 600 children; and

WHEREAS, this program continues to grow, with no additional facilities available to expand the program; and

WHEREAS, City staff has had discussions with Twin Arbor Athletic Club for several years to gain access to its pools in order to expand the program; and

WHEREAS, for a third year, staff was successful in gaining access, thereby allowing an additional 100+ swimmers to participate in the Summer Swim League; and

WHEREAS, staff therefore recommends that the City Council approve the agreement, which would allow the swimming pools at Twin Arbor Athletic Club to be used for meets and a team comprised of Twin Arbor members to participate in the league.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbor Athletic Club, for use of pools at Twin Arbor Athletic Club facilities for the period June 2, 2003 to July 27, 2003.

Dated: April 16, 2003

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I hereby certify that Resolution No. 2003-62 was passed and adopted by the Lodi City Council in a regular meeting held April 16, 2003, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and  
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk